



April 26, 2013

Eastern Region Office
PO Box 40008
Philadelphia, PA 19106
215.592.1513 T
215.592.1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717.238.2258 T
717.236.6895 F

Western Region Office
313 Atwood Street
Pittsburgh, PA 15213
412.681.7736 T
412.681.8707 F

Dr. Scott A. Deisley
Superintendent, Red Lion Area School District
696 Delta Road
Red Lion, PA 17356

BY EMAIL TO deisleys@rlasd.net

RE: Gender Identity Discrimination and Retaliation for Protected Speech

Dear Dr. Deisley,

We represent Issak Wolfe, a transgender twelfth-grade student at Red Lion Area Senior High School. It has come to our attention that the principal, Mr. Mark Shue, has embarrassed Issak in front of his classmates by deliberately refusing to recognize Issak's gender identity on the prom court ballot, and that several administrators have subsequently threatened Issak with retribution for his girlfriend's public statements about Principal Shue's mistreatment of Issak. In addition, we understand that Issak repeatedly has sought assurances from Principal Shue that at graduation he will be referred to by his male name and allowed to wear that same black robe that other boys are allowed to wear.

By retaliating against Issak and his girlfriend for engaging in protected speech and imposing sex stereotypes on Issak that conflict with his gender identity, Principal Shue and the Red Lion Area School District have violated Issak's clearly established rights under the First Amendment, Title IX, and the Equal Protection Clause. On behalf of Issak, we request immediate assurances that Principal Shue and Red Lion Area School District will not take any actions to prevent Issak and his girlfriend from attending prom or otherwise retaliate against them for engaging in speech protected under the First Amendment.

In addition, we request that Red Lion Area School District adopt a nondiscrimination policy to ensure that students are not discriminated against or stigmatized based on their gender identity, that the District provide assurances that Issak will be allowed to dress in a black robe and referred to by his male name at graduation, and that the district apologize to Issak for the needless embarrassment and pain that Principal Shue's actions caused.

Factual Background

Our understanding of the facts is as follows:

Issak is a transgender male and has been using the name Issak Wolfe consistently since the summer of 2011. Although Issak's classmates and most of his teachers have supported and respected his male gender identity, Issak recently encountered resistance to his gender identity from the high school principal, Mr. Shue, in relation to the upcoming prom and graduation.

Incorrectly Listing Issak as a Candidate for "Prom Queen"

As we understand it, every student at Red Lion Area Senior High School who purchases a prom ticket may put his or her name on the ballot for prom king or prom queen. Issak purchased a ticket to prom, and, with overwhelming support from his classmates, began actively campaigning to be elected prom king. He distributed flyers urging his classmates to vote for Issak Wolfe for prom king, and received uniformly positive feedback from the student body, with many students pledging to vote for him.

Issak approached members of the student executive council to make sure he would appear as Issak Wolfe on the prom king side of the ballot, rather than the prom queen side of the ballot under his female birth name. These students told Issak that they would take care of this, but when Issak followed up with them about the issue, they could not assure him that the issue was resolved.

Issak then raised his request with Assistant Principal Kate Diorio. Assistant Principal Diorio also assured Issak that she would ensure that he appeared on the prom king side of the ballot.

On Wednesday, April 17, 2013—the day before prom court voting was scheduled to start—Issak approached Jen Wireman, the faculty member in charge of prom, to confirm that his name would appear on the prom king side of the ballot. Ms. Wireman told Issak that although she had not previously been alerted to the issue, she would change his name and list him on the prom king side of the ballot.

On Thursday, April 18, the school released the prom court ballot, and Issak was dismayed and embarrassed to discover that he was listed as candidate for prom queen and referred to by the female name he was assigned at birth instead of by his male name.

Members of the student executive council reported to Issak that the decision to list him under his birth name as a prom queen candidate had come from "someone higher up," so Issak immediately requested a meeting with school administrators. Various administrators apologized to Issak for the hurtful incident and confirmed that Principal Shue had ordered that Issak be listed as a prom queen candidate because Principal Shue "didn't feel comfortable" with Issak running for prom king.

Issak felt that he'd been the victim of discrimination, and consulted the school handbook about what to do in such circumstances. The school's nondiscrimination policy directed Issak to contact Mary Smith in the Red Lion Area School District Pupil Services Offices. Although Ms. Smith expressed sympathy and said she would look into the matter, Issak never heard back from her.

Retaliation for Engaging in Protected Speech

Several of Issak's friends posted messages on various social media sites to express their outrage at the school district's treatment of Issak. One of the students that spoke out was Taylor Thomas, who is herself a former Red Lion Area Senior High School student and Issak's girlfriend of two years. Taylor submitted a note describing the incident to the organizers of the "Have a Gay Day" Facebook page (an LGBT support page). A copy of the Facebook post is attached as Exhibit A.

Taylor also started a petition on Change.org calling for signatories to "let Mr. Shue know that we will not stand for any discriminatory acts. Every one deserves to be treated with equality and respect that a human being deserves." The petition explained that "[w]e are trying to bring attention to this story so that people out there in Issak[s] position know they are not alone." In the petition, Taylor also wrote that "[i]n my personal opinion, if a person can't dispel their bigotry for the sake of running a school then he or she should not be in the principal's position." A copy of the Change.org petition (with revisions described below) is attached as Exhibit B.

On Monday, April 22, Phyllis March, the Guidance Department Chair, called Issak into her office to meet with her, Assistant Principal Diorio, and Principal Shue to discuss the media attention garnered by the students' efforts to speak out about Issak's treatment. The administrators brought up Taylor's Change.org petition. Assistant Principal Diorio told Issak that the content of the petition was libel, and Principal Shue said that he would sue Taylor and bar her from attending prom by labeling her "dangerous" unless she removed the line from the Change.org petition suggesting that school principals should set aside their personal prejudices for the sake of the school.

Principal Shue then told Issak that Issak and school officials should all use the same blanket statement in response to any media inquiries. Principal Shue wrote out a statement, which he described as the "script" they should use, that said: "For the safety and well-being of the students at RLASHS, the family, staff and administration ask that you respect our privacy in this matter." Feeling that he had no choice, Issak accepted Principal Shue's "script," and asked Taylor to remove the statement that Principal Shue had objected to from the Change.org petition.

On Tuesday, April 23, Issak spoke with both Assistant Principal Diorio and Principal Shue, letting them know that the Change.org petition had been updated to remove the offending line, and seeking assurances that Taylor would not be excluded from prom as "dangerous." Assistant Principal Diorio asked whether the same line had been removed from the "Have a Gay Day" Facebook page (which the administrators had not previously mentioned).

On Wednesday, April 24, Assistant Principal Diorio called Issak out of class to meet with her and Principal Shue. They told Issak that Taylor would still be barred from prom because they were not satisfied with the changes Taylor had made to her online statements. Principal Shue said that he was still unhappy with this line in the Facebook post: “We are trying to shed light on the bigotry and closed mindsets of our small town of Red Lion.”

Forcing Issak to Wear a Yellow Gown and Use a Female Name at Graduation

Our understanding is that for graduation ceremonies at Red Lion Area Senior High School, male students wear a black cap and gown and female students wear yellow caps and gowns. Issak has asked Assistant Principal Diorio several times for permission to wear a black cap and gown like other male students and for the school to use Issak Wolfe as the name to be read aloud when he crosses the stage to receive his diploma.

Assistant Principal Diorio stated that he can wear a black cap and gown, but said Principal Shue would have to decide about reading Issak’s name at graduation. Issak has asked Principal Shue about this several times and Principal Shue always tells him “I’ll think about it.” In addition, in light of Principal Shue’s recent actions in connection with prom, Issak fears that the district will fail to honor Assistant Principal Diorio’s promise and will force him to wear the yellow gown and cap that female students wear.

Legal Analysis

Based on these facts, Principal Shue has exposed himself and Red Lion Area School District to significant legal liability for violating Issak’s clearly established rights under the First Amendment, Title IX, and the Equal Protection Clause.

Retaliation for Protected Speech in Violation of the First Amendment

It is well established that the First Amendment prohibits punishing students for speech that is critical of the school in order to avoid embarrassment or offense. Subject to only a few narrow exceptions that are not applicable here, schools may generally only censor student speech if it threatens to substantially and materially interfere with school operations. *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503 (1969). This standard “cannot be met if school officials are driven by ‘a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.’” *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 926 (3d Cir. 2011) (en banc) (quoting *Tinker*, 393 U.S. at 509).

Furthermore, schools’ authority to punish students for online speech posted off-campus is severely limited. See, e.g., *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 215-16 (3d Cir. 2011) (en banc) (holding that school lacked the authority to punish student for online speech posted from an off-campus computer).

Here, Taylor’s online speech would be protected by the First Amendment if she had made those statements in school. Given the heightened protection for out-of-school student speech, it is beyond dispute that the School District lacks the authority to punish her speech.

It further violates the First Amendment to direct a student to read a statement prepared by school officials in response to any media inquiries. *See, e.g., Miller v. Mitchell*, 598 F.3d 139, 151-52 (3d Cir. 2010) (internal citations omitted) (recognizing students' rights to be free from school-compelled speech); *Circle Schs. v. Pappert*, 381 F.3d 172, 178 (3d Cir. 2004) (recognizing that government action compelling students to salute the flag or recite the national anthem violates the First Amendment) (citing *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

On behalf of Issak, we request immediate assurances that Principal Shue and Red Lion Area School District will not take any actions to prevent Issak and his girlfriend from attending prom or otherwise retaliate against them for engaging in speech protected under the First Amendment. We further ask that the District clarify that Issak will not be punished for making his own statements to the media rather than delivering the statement prepared by the school. Please let us know in advance of the prom whether or not Issak will be permitted to bring his girlfriend, Taylor, as his prom date.

Sex Stereotyping in Violation of the Title IX, the Equal Protection Clause, and the First Amendment

Labeling Issak as a candidate for "prom queen," forcing him to wear a yellow cap and gown and graduation, and refusing to allow him to use his male name at graduation constitutes impermissible sex stereotyping in violation of Issak's rights under Title IX and the Equal Protection Clause. It is well established that under Title IX and the Equal Protection Clause, school officials cannot force students to conform to sex stereotypes. *See Glenn v. Brumby*, 663 F.3d 1312, 1913-20 (11th Cir. 2011); *Sturgis v. Copiah County Sch.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at *4-*5 (S.D. Miss. Sept. 15, 2011); *see also Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp.2d 135, 150-52 (N.D.N.Y. 2011).

Protections against sex stereotyping also protect transgender students who seek to act and present in accordance with their gender identity. *See Glenn v. Brumby*, 663 F.3d at 1913-20; *see also Sturgis*, 2011 WL 4351355, at *4-*5 (declining to dismiss sex stereotyping claim where gender nonconforming female student was required to wear a drape for yearbook photograph instead of a tuxedo). In addition, under the First Amendment students have a right to dress at school events such as prom and graduation in accordance with their gender identity. *See Zalewska v. Cnty. of Sullivan, New York*, 316 F.3d 314, 320 (2d Cir. 2003); *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. Oct.11, 2000); *see also McMillen v. Itawamba Cnty. Sch. Dist.* 702 F. Supp. 2d 699, 704-05 (N.D. Miss. 2010) (holding that lesbian student's desire to wear a tuxedo instead of a prom dress conveyed message against conformity with traditional gender roles that was protected by First Amendment).

Forcing Issak to wear a yellow cap and gown instead of a black one and preventing him from using his male name at graduation constitutes impermissible sex stereotyping and violates his rights under the First Amendment. Indeed, it is difficult to conceive of any rationale for such actions other than school officials' desire to enforce sex stereotypes or discomfort with Issak's gender nonconformity. In addition, such actions threaten to create a school environment of

intolerance, exposing transgender students like Issak to further discrimination, bullying, and other forms of disrespect.

We request that Red Lion Area School District adopt a nondiscrimination policy to ensure that students are not discriminated against or stigmatized based on their gender identity and that the District provide assurances that Issak will be allowed to dress in a black robe and referred to by his male name at graduation. In addition, under these circumstances, we ask that the school apologize to Issak for the needless embarrassment and pain that Principal Shue's actions caused Issak, and that the District take steps to enact and implement a policy of non-discrimination based on gender identity to prevent further harassment and embarrassment of transgender students in the District. The District should also implement training for its educators in discrimination law and in how to provide an inclusive environment for transgender and gender-nonconforming students.

Conclusion

Please contact us immediately to confirm that Issak and Taylor will be allowed to attend prom. With respect to the remaining issues discussed in this letter, we request a response no later than **May 3, 2013**.

Please note that the ACLU and the ACLU of Pennsylvania reserve the right to take any necessary and appropriate legal action to protect our client's rights if the District refuses these requests. If forced to file suit, we will request that the District pay our attorneys' fees, as provided for by federal civil rights laws.

Please feel free to contact us with any questions. Thank you in advance for your anticipated cooperation in this matter.

Sincerely,



Molly Tack-Hooper
Staff Attorney
ACLU of Pennsylvania
(215) 592-1513 x 113
mtack-hooper@aclupa.org

Joshua Block
Staff Attorney
ACLU LGBT Project
(212) 549-2593
jblock@aclu.org

Enclosures

CC: Mr. Chris E. Seitz
President, Red Lion Area School District Board
696 Delta Road
Red Lion, PA 17356

Benjamin L. Pratt, Esq.
CGA Law Firm
BY EMAIL TO bpratt@cgalaw.com

Mr. Mark Shue
Principal, Red Lion Area Senior High School
200 Horace Mann Ave.
Red Lion, PA 17356

EXHIBIT A

(Facebook Post)

facebook

Search for people, places and things



Have A Gay Day

From our inbox: Please Share

Hello. I am writing to you today about an issue my boyfriend is having with his senior class. He attends Red Lion Area Senior High School in York, Pennsylvania and has made ample amounts of progress with his transgender process. This year most of his fellow classmates as well as some teachers call him Issak and acknowledge his transition. It has made him extremely happy to be surrounded by such an amazing support system. He had expressed to me earlier on in the year that he wanted to run for prom king so by the time prom season rolled around, I was not surprised when he began compiling a campaign and creating flyers. The amount of positive feedback he got back from his fellow classmates was overwhelming. Many people agreed to vote for him and it was almost a guarantee that he would end up winning. Issak is a very charismatic person and has been in charge of his schools' GSA as well as Day of Silence for two years now. He is very popular at his school and many people believed him to be a shoo in for the prom king position. On the day meant for voting, he went to school and at lunch time he made his way to the ballot to vote for himself. However when he got there, he found that his name had been switched to his birth name and put into the girls' category. Embarrassed and extremely distraught, he immediately went to the principal's office but could not meet with him. The reasoning behind the switch of the ballot was the doing of their new principal Mr. Mark Shue. His reasoning for not allowing Issak to run for prom king? He felt uncomfortable with it. Issak's mother as well as many teachers and outside forces have taken ahold of this injustice and we plan to fight this decision with everything in our power. We are trying to bring attention to this story so that people out there in Issaks' position know they are not alone, so that my boyfriend has the chance to stand up on stage wearing the crown he deserves, the prom king sash firmly across his shoulder. We are trying to shed light on the bigotry and closed mindsets of our small town of Red Lion. We must let Mr. Shue know that his discrimination will not be tolerated.

Thank you, Taylor T.

Like • Comment • Share • April 20

Album: Timeline Photos

Shared with: Public

[Open Photo Viewer](#)

[Download](#)

[Report](#)

EXHIBIT B

(Text of Change.Org Petition as Modified)

https://www.change.org/en-GB/petitions/mr-mark-shue-issak-oliver-wolfe-for-prom-king-and-his-name-read-at-graduation?utm_campaign=share_button_action_box&utm_medium=facebook&utm_source=share_petition

Hello. I am writing to you today about an issue my boyfriend is having with his senior class. He attends Red Lion Area Senior High School in York, Pennsylvania and has made ample amounts of progress with his transgender process. This year most of his fellow classmates as well as some teachers call him Issak and acknowledge his transition. It has made him extremely happy to be surrounded by such an amazing support system. He had expressed to me earlier on in the year that he wanted to run for prom king so by the time prom season rolled around, I was not surprised when he began compiling a campaign and creating flyers. The amount of positive feedback he got back from his fellow classmates was overwhelming. Many people agreed to vote for him and it was almost a guarantee that he would end up winning. Issak is a very charismatic person and has been in charge of his schools' GSA as well as Day of Silence for two years now. He is very popular at his school and many people believed him to be a shoo in for the prom king position. On the day meant for voting, he went to school and at lunch time he made his way to the ballot to vote for himself. However when he got there, he found that his name had been switched to his birth name and put into the girls' category. Embarrassed and extremely distraught, he immediately went to the principal's office but could not meet with him. The reasoning behind the switch of the ballot was the doing of their new principal Mr. Mark Shue. His reasoning for not allowing Issak to run for prom king? He felt uncomfortable with it. Issak's mother, as well as many teachers and outside forces have taken ahold of this injustice and we plan to fight this decision with everything in our power. We are trying to bring attention to this story so that people out there in Issaks' position know they are not alone, so that my boyfriend has the chance to stand up on stage wearing the crown he deserves, the prom king sash firmly across his shoulder. We must let Mr. Shue know that we will not stand for any discriminatory acts. Every one deserves to be treated with equality and respect that a human being deserves.

Thank you. Taylor T.